



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

January 28, 2003

Mr. Scott Gibson
Enforcement Attorney
Texas Board of Architectural Examiners
P. O. Box 12337
Austin, Texas 78711-2337

OR2003-0591

Dear Mr. Gibson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 175823.

The Texas Board of Architectural Examiners (the "department") received a request for the name or names of the individual(s) who "turned in [the requestor's] ad" in reference to a specified case. You claim that the requested information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered your arguments regarding your claimed exception to disclosure.

Initially, we note that you state:

Ms. Clark requested the identity of the person or persons who sent to the Board a copy of a printed advertisement in which Ms. Clark was referred to as an interior designer. Ms. Clark did not request a copy of, or access to, any specific document. Therefore, there are no copies of any documents enclosed as exhibits responsive to this request.

It is implicit in several provisions of the Public Information Act (the "Act") that the Act only applies to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 87 (1975), 342 at 3 (1982), 416 at 5 (1984), 452 at 2-3 (1986), 555 at 1-2 (1990), 572 at 1

(1990). However, a governmental body must make a good faith effort to relate a request to information that it holds. *See* Open Records Decision No. 561 at 8 (1990). Therefore, to the extent that a governmental body maintains information that may be responsive to a request, a governmental body is required to make a good faith effort to relate the request to this information. *See* Open Records Decision No. 561 at 8 (1990).

Here, you do not state that the board has no information that contains the name or names of individuals who sent to the board a copy of a printed advertisement in which Ms. Clark was referred to as an interior designer. Thus, while you state that the requestor does not seek copies of or access to a particular document, we are uncertain whether the board maintains information that relates to this request. To the extent that the board does not maintain any such information, we conclude that the board need not respond to this request. *See* Gov't Code §§ 552.002, .021, .227, .351; *see also* Attorney General Opinion H-90 (1973); Open Records Decision Nos. 87 (1975), 342 at 3 (1982), 416 at 5 (1984), 452 at 2-3 (1986), 555 at 1-2 (1990), 572 at 1 (1990).

However, to the extent that the board does maintain information that relates to the request, we note that section 552.301(e) of the Government Code provides that a governmental body that requests an attorney general decision under section 552.301(a) must, within a reasonable time, but not later than the fifteenth business day after the date of receiving the written request, submit to the attorney general, among other items, a copy of the specific information requested or representative samples of such information if a voluminous amount of information was requested. *See* Gov't Code § 552.301(e). To date, the board has not submitted to us a copy of the specific information requested or representative samples of such information. Therefore, to the extent that the board maintains information that relates to this request, we find that the board has failed to comply with section 552.301 of the Government Code in requesting a decision from our office with regard to the requested information.

Because the board failed to comply with the procedural requirements of section 552.301 in requesting this decision, the information at issue is now presumed public. *See* Gov't Code § 552.302; *see also* *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The board must demonstrate a compelling interest in order to overcome the presumption that the requested information is now public. *See id.* Normally, a compelling interest is demonstrated when some other source of law makes the requested information confidential or when third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Although the board claims that the requested information is excepted from disclosure pursuant to section 552.101 in conjunction with the common-law informer's privilege, we note that a claim under the informer's privilege may be waived by a governmental body since the privilege belongs to the government. *See* Open Records Decision No. 549 at 6 (1990). In this instance, the board waived its interest in its informer's privilege claim by failing to

comply with the requirements of section 552.301(e) of the Government Code. Therefore, the informer's privilege cannot provide a compelling interest in this instance. Because the board does not claim that the requested information is otherwise excepted from disclosure, we conclude that the board must release the requested information to the requestor to the extent that the board maintains information that relates to the request.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald J. Bounds".

Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 175823

c: Ms. Deaun Clark
7703 Post Bridge Road
Spring, Texas 77389
(w/o enclosures)